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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE, Plaintiff and Respondent, v. JEANNETTE C. LONG, Defendant and Appellant.	C076292, C077406, C078221 (Super. Ct. No. CRF110002374)

Defendant Jeannette C. Long appeals following her conviction of possessing a blank or unfinished check with intent to complete it in order to defraud someone (Count One) and passing checks with insufficient funds with intent to defraud (Counts Four and Five). (Pen. Code, §§ 475, subd. (b), 476a; unless otherwise set forth, statutory section references that follow are to the Penal Code.) The trial court placed defendant on formal probation.

Defendant filed three notices of appeal, which we have consolidated.

In the appeal from the conviction (C076292) defendant contends as to Count One that (1) it is barred by the statute of limitations, (2) there is no substantial evidence of intent to defraud, (3) the jury may have convicted on a legally invalid theory, and (4) a modified version of CALCRIM No. 1931 improperly allowed the jury to convict even if the check was complete as opposed to blank or unfinished (§ 475). As to Counts Four and Five for passing checks with insufficient funds -- which the court later reduced to misdemeanors pursuant to Proposition 47 -- defendant argues there is no substantial evidence of intent to defraud.

Defendant also filed an appeal (C077406) from a court order regarding restitution, but she makes no mention of it in her consolidated appellate brief -- perhaps because the trial court subsequently struck a portion of restitution -- and therefore we need not consider it.

Defendant's third notice of appeal (C078221) is from the trial court's order denying defendant's Proposition 47 application to reduce the Count One felony to a misdemeanor. Defendant claims reduction is compelled because the amount at issue was less than $950.

We conclude defendant fails to show any ground for reversal, and we therefore affirm the trial court in all respects.

FACTS AND PROCEEDINGS

On May 30, 2008, defendant opened a savings and checking account at Travis Credit Union, with a $50 deposit in checking and $5 deposits in savings and holiday savings. After two weeks of activity, she had $5 in checking and $1.61 in savings. There were no deposits after June 7, 2008.

Travis Credit Union opens accounts provisionally pending a check for negative banking history, and on June 18, 2008, Travis Credit Union closed defendant's account

due to an adverse report about her past financial history. Defendant denies receiving notice that the account was closed, but for purposes of this appeal it does not matter.

On April 17, 2009, someone withdrew the remaining balance of $6.61.

This prosecution involves checks defendant gave to victim Norman L. (To maintain privacy, we refer to the victims by their first name.) The jury heard evidence -- and convicted defendant -- of six checks defendant gave to Norman. After the verdicts, the trial court granted defendant's motion to dismiss four of those counts on statute of limitations grounds. However, evidence of all checks is relevant to defendant's common plan (Evid. Code, § 1101). The trial court, over defense objection, allowed evidence of bad checks defendant gave to other victims in another county, as relevant to defendant's intent, knowledge, and common plan (Evid. Code, § 1101).

Norman met defendant in 2008 when he was gambling at a casino. They conversed and exchanged phone numbers. She asked to borrow $2,400 that she said she needed to stop her car from being repossessed. He loaned her the money. On other occasions, he loaned her money that she said she needed for food, rent, and her children. She said she would pay him back. Norman denied defendant's claim that he had her write checks for double the amount he was lending her and gave her two years to pay him back.

Norman sometimes gave defendant money for gambling but did not expect her to repay that money. After a while, he asked to be repaid for the loans. They met, and she gave him two checks -- one for $2,400 (check 1075) and one for $700 (check 1079). She filled out both checks except for the date. She told him to hang onto them and she would let him know when he could cash them. After a couple of weeks she told him he could cash the checks, so he wrote a date (September 9, 2008) on each check and deposited them in his bank account. His bank later informed him the checks were no good. He phoned defendant, who "blew her cork," claiming she did not tell him to go ahead.

On appeal, as at trial, the defense has tried to portray Norman as a liar because of confusion with his preliminary hearing testimony as to whether he or defendant wrote the dates on the first two checks. The jury obviously rejected the defense characterization, and we need not belabor the point.

Despite the two bad checks, Norman continued to loan defendant money because she always promised to pay, and he thought she really needed help. She filled out and gave him four other checks for loans, which he brought to Travis Credit Union to ask if they were good and which were handed back to him. Those four checks were (1) check 1074 for $600 dated November 11, 2008; (2) check 1076 for $700 dated November 18, 2008; (3) check 1080 for $400 dated December 1, 2008; and (4) check 1078 for $200 dated December 5, 2008.

Unable to collect from defendant, Norman brought the four checks to the District Attorney's office, which contacted defendant, who claimed she had been making payments to Norman. She asked Norman to back up her story, but he refused because she had not paid him anything.

The trial court allowed evidence of defendant passing bad checks to other victims in other jurisdictions for the limited purpose of showing intent, knowledge, and common plan. These bad checks included $2,300 to Rowena D. on August 21, 2008; $200 to Zenaida D. on October 13, 2008; $870 to Gina [last name illegible] on March 12, 2009; and $2,100 to Jannes A. on March 16, 2009. Rowena and Zenaida testified at trial. Each separately met defendant while gambling at casinos and became friendly because they shared with defendant a Filipino heritage. Defendant asked each to loan her money, and each did. Rowena loaned defendant a total of $2,300. Defendant gave her a check to repay the loan and said to cash it that weekend, but the check bounced. Rowena phoned defendant, who made excuses about someone breaking into her car and stealing her money. They kept in touch for a while, but defendant said she had no money to repay the loan and then defendant's phone was disconnected. Rowena later confronted defendant

at a casino, who handed over a $500 chip. Zenaida told a similar story. She loaned defendant money at defendant's request. When the victim asked to be paid back, defendant gave a $200 check as partial payment, but the check bounced. Zenaida tried phoning defendant but the line was always busy or defendant was not there.

Defendant testified at trial that she did not intend to defraud anyone. She claimed Norman gave her $100 as a gift. She lost the money gambling and asked him for a loan. He loaned her money but on the condition that she write him a check for double the amount, which would be payable in two years. She told him she did not have money in the account. She wrote him a check but did not date it. She borrowed more money from Norman the same way. She testified he later suggested she could repay him through sexual favors. She claimed her money problems were due to her gambling. She postdated checks because she expected to get money in the future. She denied ever telling Norman he could cash the checks. She denied intent to defraud. She denied telling an investigator in another county that she could not pay for bad checks she wrote because she had breast cancer and needed her money for medicine. Defendant testified she said she had depression, not breast cancer.

Defendant admitted she had a Bank of America account that was closed in January 2007 with a negative balance of $1,611, and a First Northern Bank of Dixon account that was closed in September 2007 with a negative balance of $1,544, and a Bank of America account that was closed in June 2008 with a negative balance, and a Wells Fargo account that was closed in September 2010 with a negative balance of $866.

The prosecution put on a rebuttal witness -- an investigator from the Solano County District Attorney's office -- who said defendant in May 2008 completed a three-hour class on proper use of checks and banking accounts, as part of her involvement in Solano County's bad check prosecution program. Defendant told them she could not repay for her bad checks because she had breast cancer and needed to buy medication.

The jury found defendant guilty of Count One, possessing a blank check with intent to defraud (§ 475, subd. (b)) -- miscited as subdivision (d) in the reporter's transcript -- and found defendant guilty on all six counts of passing checks with insufficient funds with intent to defraud (§ 476a, subd. (a)).

Defendant moved for a new trial or dismissal of Counts One, Two, Three, Six, and Seven on statute of limitations grounds, noting a criminal defendant can invoke a statute of limitations at any time. As we discuss *post*, the trial court dismissed Counts Two, Three, Six, and Seven as time-barred but denied dismissal of Count One because possession of checks with intention to complete them in order to defraud someone was continuing conduct, some of which occurred within the limitations period. The court denied the motion for new trial.

The court placed defendant on formal probation for five years and subsequently ordered payment of restitution.

Defendant filed notices of appeal from the convictions (C076292) and restitution order (C077406).

After passage of Proposition 47 -- which raised to $950 the dollar amount dividing felonies and misdemeanors -- defendant in November 2014 asked the trial court to reduce all three felony convictions (Counts One, Four, and Five) to misdemeanors. (§ 1170.18.) The court, with the prosecutor's acquiescence, reduced Counts Four and Five to misdemeanors but concluded defendant failed to meet her burden on Count One, as we discuss *post*.

The court struck part of the restitution order without prejudice.

Defendant filed a notice of appeal from denial of her Proposition 47 application.

DISCUSSION

I

Statute of Limitations

Defendant argues the trial court erred in denying her post-verdict motion to dismiss Count One, possession of a blank or unfinished check with intent to defraud (§ 475, subd. (b)), because it is barred by the four-year statute of limitations (§ 801.5). We disagree because this case involved a continuing course of conduct by the defendant who opened the bank account in order to get blank checks she could use to defraud people -- including all six of the checks that defendant ultimately signed, and two of those checks (Counts Four and Five) were within the limitations period. Although the trial court granted defendant's motion to dismiss the counts of passing bad checks with respect to checks outside the limitations period (Counts Two, Three, Six, and Seven), the jury verdicts tell us the jury found Count One to be based on all six checks, including the two within the limitations period.

A. Background

Count One alleged defendant possessed incomplete checks between September 9, 2008, and December 5, 2008, with intent to complete them to defraud someone (§ 475(b)). As to Count One, the jury was instructed that defendant possessed six blank or unfinished checks with intention of completing them with intent to defraud someone. (§ 475(b).) The six checks were the same six checks she ultimately signed and gave to Norman and were the basis for Counts Two through Seven -- passing bad checks. The checks were ultimately dated:

September 9, 2008 - check 1075 for $2400 - Count Two

September 9, 2008 - check 1079 for $700 - Count Three

November 11, 2008 - check 1074 for $600 - Count Four

November 18, 2008 - check 1076 for $700 - Count Five

December 1, 2008 - check 1080 for $400 - Count Six, and

December 5, 2008 - check 1078 for $200 - Count Seven.

The amounts of the last two checks made them misdemeanors subject to the one-year limitations period. (§ 802.)

On May 25, 2011, the prosecution filed a complaint alleging the passing of only the last four checks as section 476a offenses. These were the four checks that Norman brought to the District Attorney's office.

An arrest warrant issued on July 25, 2011.

On November 20, 2012, after the preliminary hearing, the prosecution filed an Information alleging the passing of all six bad checks under section 476a.

Defendant was arraigned on November 28, 2012.

At a trial readiness conference on November 15, 2013, the prosecution filed a First Amended Information, adding as a new Count One that defendant possessed a blank or unfinished check between September 9th and December 5th of 2008, with intent to complete it in order to defraud someone, in violation of section 475, subdivision (b). The First Amended Information re-numbered the prior six counts as Counts Two through Seven.

After the verdicts, the trial court granted defendant's motion to dismiss Counts Two, Three, Six, and Seven on statute of limitations grounds -- and no one challenges that ruling on appeal.

But the trial court denied defendant's motion to dismiss Count One as barred by the statute of limitations. The court noted possession of checks with intention to complete them in order to defraud someone was continuing conduct, some of which occurred within the limitations period.

B. Analysis

Defendant's contention that the trial court erred in failing to dismiss Count One as barred by the statute of limitations present questions of law that we review de novo. (*People v. Lopez* (1997) 52 Cal.App.4th 233, 250.) We need not address the People's fallback position that delayed discovery (a factual matter) extended the limitations period.

The People do not dispute that, where the charging document on its face indicates it may be time-barred, a criminal defendant can invoke a statute of limitations at any time. (*People v. Williams* (1999) 21 Cal.4th 335, 341.)

The limitations period for the felonies (Counts One, Two, and Three) was four years from completion of or discovery of the fraud. (§§ 801.5, 803, subd. (c).) The limitations period for the misdemeanors (Counts Six and Seven) was one year after commission. (§ 802, subd. (a).)

"No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter." (§ 803, subd. (b).) The two key terms are "prosecution" and "same conduct."

Prosecution commences, for purposes of these statutes, "when any of the following occurs: [¶] (a) An indictment or information is filed. [¶] (b) A complaint is filed charging a misdemeanor or infraction. [¶] (c) The defendant is arraigned on a complaint that charges the defendant with a felony. [¶] (d) An arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint." (§ 804.) The filing of a complaint charging a misdemeanor (§ 804, subd. (b)) does not generally commence prosecution of a *felony* for statute of limitations purposes. (*People v. Terry* (2005) 127 Cal.App.4th 750, 764 (*Terry*).)

Here, the People maintain -- and defendant does not dispute -- that prosecution was commenced when an arrest warrant for defendant issued on July 25, 2011, for

passing bad checks between November 11 and December 5, 2008. This stopped the clock on new charges for the "same conduct." (§ 803, subd. (b).)

Defendant argues her prosecution for passing bad checks (§ 476a) did not stop the running of the clock on the charge of possessing incomplete checks with intent to complete them in order to defraud someone (§ 475, subd. (b)), because they are not the "same conduct" as required by section 803, subdivision (b). We disagree.

"Same conduct" is a flexible term for a principle that should meet the reasonable needs of prosecution while affording the defendant fair protection against an enlargement of the charges after the running of the limitations period. (*People v. Bell* (1996) 45 Cal.App.4th 1030, 1064 (*Bell*).) *Bell* held that charges of forgery and false filings of bankruptcy petitions and grant deeds were based on the "same conduct" as rent skimming charges, where the forgery and false filings were merely aspects of the rent skimming scheme. (*Id*. at p. 1064.) *People v. Hamlin* (2009) 170 Cal.App.4th 1412, held that child abuse charges in 2005 were based on the same conduct as abuse charges in 2004, notwithstanding a change in theory from direct to indirect abuse. (*Id*. at pp. 1441-1442.) *People v. Greenberger* (1997) 58 Cal.App.4th 298, held that murder and aggravated kidnapping charges were based on the "same conduct" permitting the jury to be instructed on the lesser offense of simple kidnapping without violating the statute of limitations. (*Id*. at p. 369.) Section 803 is not a categorical exception to the running of the limitations period for the entire class of same or similar criminal acts against the same victim during the same time frame; rather, the tolling provision suspends the running of the limitations period only for the conduct underlying a charged offense but does not stop the clock on completely separate instances of criminal conduct, even when acts are proven by generic testimony. (*Terry, supra*, 127 Cal.App.4th at p. 769.)

Here, defendant's conduct in possessing the incomplete checks was not completely separate conduct; it was conduct underlying the charged offenses of passing bad checks. It was the prosecution's theory that defendant created the bank account in

order to get the blank checks that she could fill out and pass to victims as purported payment for loans.

Defendant argues the "mere fact" she opened the account and possessed blank checks did not establish that she intended to defraud Norman with any of the six checks she made payable to him. However, her prosecution on Count One was based not only on the mere fact she opened the account and possessed the checks, but also on other solid evidence, e.g., that she had only $6.61 in the account and deposited nothing in the account yet brought the checks to the casinos and ultimately exchanged the useless checks for cash, and also on the trail of evidence of bank accounts closed with negative balances and multiple victims, and defendant's excuses at trial that the jury obviously did not believe.

We conclude Count One was not barred by the statute of limitations.

C. CALCRIM No. 1931

While we are on the topic of the statute of limitations, we address defendant's contention that instructional error may have resulted in the jury finding defendant guilty for something barred by the statute of limitations. We reject the contention.

The trial court instructed the jury with a modified version of CALCRIM No. 1931, as follows:

"The defendant is charged in Count One with possessing a blank or unfinished check with intent to defraud.

"To prove that the defendant is guilty of this crime, the People must prove that:

"1. The defendant possessed a blank or unfinished check; [¶] AND [¶]

"2. When the defendant possessed the document, she intended to complete the document in order to defraud.

"Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of money or something else of value, or to cause damage to, a legal, financial, or property right.

"The People allege that the defendant possessed the following documents:

"1. Check 1075 for $2,400

"2. Check 1079 for $700

"3. Check 1074 for $600

"4. Check 1076 for $700

"5. Check 1080 for $400

"6. Check 1078 for $200.

"You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these documents and you all agree on which document she possessed."

Defendant argues the trial court erred by listing the checks in their *completed* form for specific amounts, because the offense is for possession of *blank or incomplete* checks. She says the trial court has the duty to refrain from giving instructions that might confuse the jury. (*People v. McNeill* (1980) 112 Cal.App.3d 330, 339.) However, while the reference to amounts was unnecessary, it does not constitute reversible error.

The offense is for possession of blank or unfinished checks with intent to complete them with intent to defraud. No reasonable jury would think that by merely identifying the specific checks by reference to their completed form that the jurors could ignore the elements of the offense necessary for conviction.

Defendant contends we cannot know whether the jury found her guilty on Count One based on checks barred by the statute of limitations. The court instructed the jurors they must unanimously agree that defendant possessed "at least one" of the checks and must agree on which check she possessed. The prosecutor argued the jurors should unanimously agree that all of the checks were possessed with intent to defraud. The

verdict form did not ask, and the jury did not disclose any particular check as the basis for the guilty verdict on Count One.

Defendant invokes the rule that, when a jury is instructed on alternate theories of liability that include both legally valid and invalid theories, a conviction must be reversed if it is impossible to conclude beyond a reasonable doubt that the jury unanimously based its verdict on a legally valid theory. (*People v. Chun* (2009) 45 Cal.4th 1172, 1203; *People v. Guiton* (1993) 4 Cal.4th 1116, 1128-1129; *People v. Green* (1980) 27 Cal.3d 1, 69-71.)

Here, however, we can conclude beyond a reasonable doubt that the jury found defendant possessed all six unfinished checks with intent to complete them to defraud someone, because the jury found defendant guilty of passing all six checks with insufficient funds in order to defraud Norman. That the court dismissed some counts on limitations grounds still leaves the jury's findings that defendant passed bad checks 1074 and 1076 in November 2008 with intent to defraud (Counts Four and Five). It was undisputed that defendant filled out those checks, which necessarily means they were blank or incomplete just before she filled them out.

We conclude defendant fails to show grounds for reversal based on the statute of limitations.

II

Sufficiency of Evidence

Defendant argues the evidence is insufficient to support a finding of intent to defraud under either section 475 or 476a.

In reviewing a substantial evidence challenge, we consider the evidence in the light most favorable to the verdict and presume the existence of every fact the trier of fact could reasonably deduce from the evidence in support of the verdict; our sole function is to determine if any rational trier of fact could have found the essential elements of the

crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v. Johnson* (1980) 26 Cal.3d 557, 576.) Substantial evidence is evidence that is reasonable, credible, and of solid value. (*People v. Streeter* (2012) 54 Cal.4th 205, 241.) Any conflicts in evidence or inferences are resolved in favor of the verdict. (*People v. Williams* (2013) 58 Cal.4th 197, 299.)

A. Count One

Section 475, subdivision (b), provides: "Every person who possesses any blank, or unfinished check, note, bank bill, money order, or traveler's check, whether real or fictitious, with the intention of completing the same or the intention of facilitating the completion of the same, in order to defraud any person, is guilty of forgery."

Defendant cites cases involving section 475, subdivision (b), notes they involved forging someone else's name and/or documents that belonged to someone else, and says in a footnote that she did not find any published case of a conviction under this statute where the unfinished checks were on the defendant's own bank account. However, defendant does not develop any argument or cite any authority that the statute is inapplicable in this case, and we need not address matters not raised or developed. (*People v. Earp* (1999) 20 Cal.4th 826, 881.) We also observe the standard jury instruction for section 475, subdivision (b) -- CALCRIM No. 1931 -- contains no requirement that the check belong to someone else or that the defendant forge someone else's name; it simply says the prosecution must prove that (1) the defendant possessed a blank or unfinished check; and (2) when the defendant possessed the document, he or she intended to complete the document in order to defraud. (CALCRIM No. 1931.)

Intent to defraud is a question of fact to be determined from all the facts and circumstances of the case. (*Perry v. Superior Court* (1962) 57 Cal.2d 276, 285.) Intent to defraud may be, and usually must be, inferred circumstantially. (*Ibid*.) Intent to

defraud may be inferred from the commission of other similar offenses. (*People v. Smith* (1984) 155 Cal.App.3d 1103, 1148; *People v. Norwood* (1972) 26 Cal.App.3d 148, 159.)

Here, we find more than substantial evidence of intent to defraud. Defendant opened her checking account with a $50 deposit, made small deposits and withdrawals for two weeks, until only a few dollars remained, and then never made any more deposits, never used the checks for any legitimate purpose, yet carried the useless checks around to casinos only to exchange them for supposed loans she had no intention of repaying.

Defendant argues that, since the victim himself said the checks were to *repay* him for loans, defendant did not use the blank checks to *obtain* money from him. She cites case law that intent to defraud means an intent to deceive to gain a material advantage or induce someone to part with property or alter his position or cause a loss or damage to the legal, monetary, or property rights of another. (E.g., *People v. Pugh* (2002) 104 Cal.App.4th 66, 72.)

However, defendant's own trial testimony contradicts her appellate claim that the checks were not used to *obtain* the loans. She testified on direct examination by her own counsel that, before she gave Norman the first check, she asked him for the loan; he asked if she had collateral like jewelry; she said no; he asked if she had a check; she said she had checks but did not have money in the account; he said that was "okay" and she should just give him a check; and so she gave him the check. When asked at trial, "as a result of giving him that check, did he give you some money?," defendant answered "Yes."

On appeal, defendant makes other frivolous arguments that do not render the evidence insubstantial. For example, she argues she did not date the first two checks – 1075 and 1079 -- when she wrote them, and she told the victim not to cash them until she said so, and therefore the evidence does not support a conclusion that when she possessed the blank checks she intended to complete them in order to defraud. She also argues

there was no intent to defraud because her checks did not cause any loss to the victim, in that the debt remained valid regardless of the invalidity of the checks.

We conclude substantial evidence supports defendant's conviction on Count One.

B. Counts Four and Five

Defendant contends the evidence is insufficient to convict her of passing checks with insufficient funds under Counts Four and Five.

Section 476a provides in part:

"(a) Any person who, for himself or herself, . . . willfully, with intent to defraud, makes or draws or utters or delivers a check, draft, or order upon a bank or depositary, a person, a firm, or a corporation, for the payment of money, knowing at the time of that making, drawing, uttering, or delivering that the maker or drawer . . . has not sufficient funds in, or credit with the bank or depositary, person, firm, or corporation, for the payment of that check, draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170. . . ."

Defendant cites authority that there is no fraudulent intent if the maker informs the payee at the time the check is uttered that there are insufficient funds to pay the check. (*People v. Pugh, supra,* 104 Cal.App.4th at p. 73; *People v. Poyet* (1972) 6 Cal.3d 530, 536; see, *People v. Descant* (1942) 51 Cal.App.2d 343, 347-348 ["utter" means to put into circulation].) However, other than the first two checks that defendant did not date, she cites no evidence but argues that a reasonable trier of fact could conclude that she did not date the other four checks and that Norman knew none of them were good. She fails to acknowledge Norman's testimony that defendant did not tell him the last four checks were no good. Even if Norman suspected they might not be good, defendant fails to show any conduct on her part that might negate intent to defraud.

Defendant repeats her frivolous argument that there was no intent to defraud because her worthless checks did not wipe out her debts to her victims.

We conclude substantial evidence supports defendant's conviction.

III

Proposition 47

In November 2014, Proposition 47 raised from $450 to $950 the dividing line between misdemeanors and felonies for offenses of forgery and passing bad checks. (§§ 473, 476a, subd. (b).)

Upon defendant's application (§ 1170.18), the trial court reduced to misdemeanors the two felony convictions for passing bad checks under section 476a -- check 1074 for $600 (Count Four) and check 1076 for $700 (Count Five). The People do not challenge that ruling on appeal -- even though section 476a, subdivision (b), allows aggregation: "[I]f the total amount of all checks . . . does not exceed nine hundred fifty dollars ($950), the offense is [a misdemeanor]."

The court denied defendant's application to reduce from a felony to a misdemeanor Count One -- possessing unfinished check with intent to complete in order to defraud (§ 475, subd. (b)). The court determined defendant failed to meet her burden to show the crime involved an amount less than $950. The court left open the possibility that defendant could seek redesignation of the offense if she were to complete her five-year probation successfully.

On appeal, defendant argues -- as she did in the trial court -- that Proposition 47 compels redesignation because a blank or unfinished check has minimal or no monetary value, or in the alternative, the only checks on which Count One could validly be based were the checks involved in Counts Four and Five, each of which was written for an amount less than $950: Check 1074 for $600 and check 1076 for $700.

In reviewing the trial court's Proposition 47 determination, we review legal conclusions de novo, and we review factual findings for sufficiency of evidence. (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136.)

Case law construing Proposition 47 is still in a state of flux, but we conclude there is no basis for reversal of the trial court's order.

Defendant had the burden to show eligibility for Proposition 47 relief. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 878.)

Proposition 47 amended section 473, which states the punishment for forgery -- which includes defendant's Count One conviction (§ 475). Section 473 now provides in subdivision (b) that "any person who is guilty of forgery relating to a check . . . , where the value of the check . . . does not exceed nine hundred fifty dollars ($950), shall be punishable by imprisonment in a county jail for not more than one year [subject to exceptions not at issue here] . . . ."

Proposition 47 also amended the statute for passing bad checks, section 476a, subdivision (b), to provide that "if the *total amount* of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed nine hundred fifty dollars ($950), the offense is punishable only by imprisonment in the county jail for not more than one year, [subject to exceptions not at issue here] . . . ." (Italics added.)

Here, as indicated, defendant was convicted of one count of section 475, subdivision (b) -- possessing a blank or unfinished check with intent to complete it to defraud someone -- based on a course of conduct involving six checks ultimately totaling $5,000. Even if we disregard the checks barred by the statute of limitations, that leaves two checks totaling $1,300.

Defendant argues that, because Count One charged possession of a blank or unfinished check (singular) and not possession of blank or unfinished checks (plural), it

would be improper to total the two checks. Defendant cites no authority. However, words used in the singular number include the plural. (§ 7.)

We see no impediment to considering the total of both checks under the single count for violating section 475, subdivision (b), possession of an unfinished check. *People v. Aguirre* (2018) 21 Cal.App.5th 429 (*Aguirre*) -- petition for review denied June 27, 2018, S248453 -- held that insofar as possession of counterfeit currency with intent to circulate (§ 476) was concerned, whether the crime remains a wobbler following passage of Proposition 47 or whether it must be charged and sentenced as a misdemeanor is determined by the total value of the counterfeit currency possessed by the defendant, not by the single highest denomination bill found in the defendant's possession (which would never yield a felony). (*Id*. at p. 435, fn. 3 [highest denomination for paper currency is $100].) Even though the face amounts of forged checks are not aggregated for Proposition 47 purposes (the rule of one count of forgery per instrument is in accord with the essence of forgery as making or passing a false document), designating the possession of multiple counterfeit bills at one time as a single crime of possessing counterfeit currency is fundamentally different. (*Id*. at pp. 436-437, citing *People v. Salmorin* (2016) 1 Cal.App.5th 738, 745.) The *Aguirre* court "discern[ed] nothing in Proposition 47 or its legislative history . . . that suggests the proponents of the measure and the electorate intended to eliminate felony possession of counterfeit currency and to treat a mule in a big-time counterfeiting operation the same as a petty criminal with a few counterfeit bills." (*Id*. at p. 435.)

A similar result makes sense in this case, where defendant opened bank accounts and possessed a stack of checks she intended to, and did, fill out for the purpose of defrauding multiple victims, including defrauding this one victim of thousands of dollars.

We recognize that *People v. Romanowski* (2017) 2 Cal.5th 903, said, "Nothing in Proposition 47 suggests that voters implicitly intended for the initiative's scope to hinge on inferences about the objectives of the crimes at issue." (*Id*. at p. 914.) *Romanowski*

held that whether the market value of stolen access card information exceeds the $950 threshold separating petty theft from grand theft (§ 490.2) depends on how much the information would sell for. In rejecting the People's argument that the scope of Proposition 47 should depend on the underlying purpose of the access card theft statute, the Supreme Court noted that Proposition 47 expressly reduced punishment for forgery crimes, which share the purpose of consumer protection, and said: "Given that Proposition 47 specifically created a $950 threshold for check forgery [under section 473, subdivision (b), the Court saw] no reason to infer (against § 490.2's plain meaning) that voters implicitly intended to exempt theft of access information simply because this criminal prohibition serves to protect consumers." (*Id*. at p. 913.) We do not read *Romanowski* as undermining our conclusion that possession of multiple blank checks may remain a felony. As noted in *People v. Bloomfield* (2017) 13 Cal.App.5th 647, the Supreme Court's analysis of Proposition 47's effect on theft crimes in *Romanowski* is consistent with the breadth of the language used in the grand theft statute, section 490.2, "but no such intent appears from the much narrower language of section 473(b) concerning punishment for forgery." (*Bloomfield, supra*, 13 Cal.App.5th at p. 655 [Proposition 47's reclassification of forgery when defendant used one of seven specified instruments applied only when one of the specified instruments was used].)

Defendant argues we cannot look to the amounts of the completed checks, because the section 475 offense is for possession of "blank or unfinished" checks. Defendant argues that a blank or unfinished check has only minimal value -- the slight intrinsic value by virtue of the paper it was printed on. (*People v. Cuellar* (2008) 165 Cal.App.4th 833, 839.) *Cuellar* held that a forged check did not have an actual value equal to the amount for which it was written but, for purposes of a grand theft conviction, it had intrinsic value by virtue of the paper it was printed on and as a negotiable instrument that, if legally drawn, would entitle its holder to payment on demand. (*Id*. at pp. 838-839.) However, *Cuellar* has not been followed in Proposition 47 cases. We view as persuasive,

though not precedential, *People v. Franco* (2016) 245 Cal.App.4th 679, review granted June 15, 2016, S233973. (Cal. Rules of Court, rule 8.1105(e) [citation of cases under review].) *Franco* held that section 473, subdivision (b), does not specify that it is the actual value of the check, as opposed to face value of that instrument, that is the value that is used to determine whether the offense is a felony or a misdemeanor. (*Id.* 245 Cal.App.4th at pp. 683-684, review granted June 15, 2016.) The word "value" in section 473, subdivision (b), must correspond to the stated value or face value of the check in order to avoid absurd consequences. (*Ibid*.)

The Supreme Court has also granted review in other cases on the issue of valuation under section 473. For example, we recently said in *People v. Gonzales* (2016) 6 Cal.App.5th 1067, review granted February 15, 2017, S240044, that the value of a check is the amount for which the check is written, and blank checks have no value. "The blank checks in count six [§ 475, subd. (b) [possessing blank checks with intent to defraud] do not have any face value, and thus also come within the ambit of section 473(b). The trial court accordingly could not have properly denied the [Proposition 47] petition on this ground . . . ." (*Id*. at p. 1072.) We did not engage in any discussion or analysis but merely made this comment in passing after stating, "The People apparently abandon any effort to sustain the trial court's ruling on this basis [that the value of forged instruments under various statutes disqualified the defendant from relief]." (*Ibid*.)

Under the circumstances of this case, we decline to find trial court error absent direction from our Supreme Court.

DISPOSITION

The judgment (order admitting defendant to formal probation), restitution order, and order denying Proposition 47 relief are all affirmed.

HULL, Acting P. J.

We concur:

ROBIE, J.

MURRAY, J.